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BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D. C. 20554

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Federal Communications Commission  
Office of Secretary

In the Matter of )  
 )  
Amendment of Section 73.202(b), ) MB Docket No. 05-282  
Table of Allotments, ) RM-11229  
FM Broadcast Stations. ) RM-  
(Rockmart, Aragon and Ringgold, GA; ) RM-  
Lynchburg, Chattanooga, Spring )  
City, Decatur, Harrison and )  
Wartrace, TN) )

TO: The Secretary  
ATTN: Assistant Chief, Audio Division  
Media Bureau

**OPPOSITION TO**  
**"MOTION TO ACCEPT RESPONSE TO REPLY COMMENTS"**

Tri-State Communications, Inc., licensee of FM Broadcast Station WLJA-FM, Ellijay, Georgia (WLJA), by its attorney, hereby submits this Opposition to the "Motion to Accept Response to Reply Comments" filed by J. L. Brewer Broadcasting of Cleveland, LLC and J. L. Brewer Broadcasting, LLC (collectively "Brewer") on January 6, 2006. In support whereof, the following is shown:

1. In the above-captioned matter, initial comments/counterproposals were due on December 5, 2005, and reply comments were due on December 20, 2005. The FCC's rules are very clear. Section 1.415(d) states that "No additional comments may be filed unless specifically

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requested or authorized by the Commission". The Commission has consistently refused to accept or consider late-filed replies and/or responses such as that filed by Brewer on January 6, 2006. **FM Table of Allotments, Dos Palos, CA et al**, 19 FCC Rcd 1826, ¶15, n. 20 (Bureau 2004); **FM Table of Allotments, Cherry Valley, AR et al**, 14 FCC Rcd 13543, 13544, n. 6 (Bureau 1999); **FM Table of Allotments, Berlin, WI et al**, 10 FCC Rcd 7733, n. 3 (Bureau 1995). The case cited by Brewer, **FM Table of Allotments, Nogales, AZ et al**, 16 FCC Rcd 20515 (2001), appears to have involved the acceptance of late-filed comments where their consideration apparently was unopposed and served to eliminate a conflict between rulemaking proposals. Such is not the case here, where WLJA-FM objects to being forced to change frequencies against its will. Brewer's unauthorized January 6 pleadings must be denied and/or stricken.

2. The issue over mail service of WLJA's December 20 was not one of our making, and in any event is a red herring. As can be seen from the attached copy of our envelope, the pleading was post-marked and mailed from Washington, DC on December 20, 2005, and was sent to counsel for Brewer, Mr. Lipp, at his firm, Vinson & Elkins, at its address in downtown Washington. Section 1.47(f) of the Rules is clear that "service by mail is complete upon

mailing". In other words, WLJA cannot be penalized for the failure of the U. S. Postal Service to deliver this package (it was returned with the stamp "Attempted Not Known"). When it was received by the undersigned, it was immediately placed in Federal Express for overnight delivery to counsel for Brewer. Of course, Brewer suffered no prejudice, because it was not entitled to file additional pleadings in this case at this time.

WHEREFORE, Tri-State Communications, Inc. urges that the "Motion to Accept Response to Reply Comments" **BE DENIED** and that the accompanying "Response to Reply Comments" **BE STRICKEN** or otherwise not considered.

Respectfully submitted,

**TRI-STATE COMMUNICATIONS, INC.**

By



Dennis J. Kelly  
Its Attorney

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January 11, 2006

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## **CERTIFICATE OF SERVICE**

It is hereby certified that true copies of the foregoing "Opposition to Motion to Accept Response to Reply Comments" were served by first-class United States mail, postage prepaid, on this 11<sup>th</sup> day of January, 2006 upon the following:

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